PEOPLE'S UNION FOR DEMOCRATIC RIGHTS AND OTHERS

v.

UNION OF INDIA & OTHERS

September 18, 1982

[P.N. BHAGWATI AND BAHARUL ISLAM, JJ.]

Public Interest Litigation, scope and need for—Violation of various labour laws in relation to workmen employed in the construction work connected with the Asian Games like Constitution of India, 1950 Arts. 24, Minimum wages Act, 1948, Equal Remuneration Act. The employment of Children Acts, 1938 and 1970, Inter-state Migrant workman (Regulation of Employment and conditions of Service) Act, 1970 and contract Labour (Regulation and Abolition) Act, 1970—Locus-standi—Maintainability of the writ and remedial relief that could be granted—Duties of Court regarding sentencing in cases of violation of Labour Laws—Constitution of India Articles 14, 23, 24 and 32—Scope of Article 23 Meaning of "begar" Duty of State when violation of Arts. 17, 23 and 24 is complained.

Petitioner No. 1, is an organisation formed for the purpose of protecting democratic rights. It commissioned three social scientists for the purpose of investigating and inquiring into the conditions under which the workmen engaged in the various Asiad Projects were working. Based on the report made by these three social scientists after personal investigation and study the 1st petitioner addressed a letter to Hon'ble Mr. Justice Bhagwati complaining of violation of various labourlaws by the respondents' and/or their agents and seeking interference by the Supreme Court to render social justice by means of appropriate directions to the affected workmen. The Supreme Court treated the letter as a writ petition on the judicial side and issued notice to the Union of India, Delhi Administration and the Delhi Development Authority.

The allegations in the petition were :

(i) The various authorities to whom the execution of the different projects was entrusted engaged contractors for the purpose of carrying out the construction work of the projects and they were registered as principal employers under section 7 of the Contract Labour (Regulation and Abolition) Act, 1970. These contractors engaged workers through "Jamadars" who brought them from different parts of India particularly the States of Rajasthan, Uttar Pradesh and Orissa and paid to these Jamadars the minimum wage of Rs. 9.25 per day per worker and not to the workmen direct. The Jamadars deducted Rupee one *per day per worker* as their commis-

sion with the result that there was a violation of the provisions of the Minimum Wages Act;

(ii) The provisions of Equal Remuneration Act, 1976 were violated as the women workers were being paid Rs. 7/- per day, the balance of the amount of the wage was being misappropriated by the Jamadars:

(iii) There was violation of Article 24 of the Constitution and of the provisions of the Employment of Children Acts, 1938 and 1970 in asmuch as children below the age of 14 years were employed by the contractors in the construction work of the various projects;

(iv) There was violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1970 which resulted in deprivation and exploitation of the workers and denial of their right to proper living condition and medical and other facilities under the Act; and

(v) The provisions of the Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, though brought into force as far back as 2nd October 1980 in the Union Territory of Delhi were not implemented by the Contractors.

Allowing the petition, the Court,

HELD: 1:1. Public interest litigation which is strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and indicate public interest which demands that violations of constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. That would be destructive of the Rule of Law which forms one of the essential elements of public interest in any democratic form of Government. [467 C-F]

1:2. The Rule of Law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the *status quo* under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the Rule of law is meant for them also, though today it exists only on paper and not in reality. If the sugar barons and the alcohol kings have the Fundamental rights to carry on their business and to fatten their purses by exploiting the consuming public, certainly the "chamaras" to belonging

A to the lowest strata of society have Fundamental Right to earn on honest living through their sweat and toil. Large numbers of men, women and children who constitute the bulk of an population are today living a sub human existence in conditions of object poverty; utter grinding poverty has broken their back and sapped their moral fibre. They have no faith in the existing social and economic system. Nor can these poor and deprived sections of humanity afford to enforce their civil and political rights. [467 F-H; 468 A-D]

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1:3. The only solution of making civil and political rights meaningful to these large sections of society would be to remake the material conditions and restructure the social and economic order so that they may be able to realise the economic, social and cultural rights. Of course, the task of restructuring the social and economic order so that the social and economic right become a meaningful reality for the poor and lowly sections of the community is one which C legitimately belongs to the legislature and the executive but mere initiation of social and economic rescue programmes by the executive and the legislature would not be enough and it is only through multi-dimensional strategies including public interest litigation that these social and economic rescue programmes can be made effective. [468 G-H; 469 B-D]

D 1:4. Public interest litigation, is essentially a cooperative or collaborative effort on the part of the petitioner, the State or public authority and the Court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them. The State or public authority against whom public interest litigation is brought should be as much interested in ensuring basic human rights, constitutional as well as legal, to those who are in a socially and economically disad- E vantaged position, as the petitioner who brings the public interest litigation before the court. The State or public authority which is arrayed as a respondent in public interest litigation should, in fact, welcome it, as it would give it an opportunity to right a wrong or to redress an injustice done to the poor and weaker sections of the community whose welfare is and must be the prime concern of the State or the public authority. [469 D-F]

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1:5. The legal aid movement and public interest litigation seek to bring justice to these forgotten specimens of humanity who constitute the bulk of the citizens of India and who are really and truly the "People of India who gave to themselves this magnificient Constitution. Pendency of large arrears in the courts cannot be any reason for denying access of justice to the poor and weaker sections of the community. [470 E-F]

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1:6. The time has now come when the courts must become the courts for the poor and struggling masses of this country. They must shed their character as upholders of the established order and the *status quo*. They must be sensitised to the need of doing justice to the large masses of people to whom justice has been denied by a cruel and heartless society for generations. The realisation must H come to them that social justice is the signature tune of our Constitution and it is their solemn duty under the Constitution to enforce the basic human rights of the poor and vulnerable sections of the community and actively help in the

realisation of the constitutional goals. This new change has to come if the judicial system is to become an effective instrument of social justice for without it, it cannot survive for long. Fortunately this change is gradually taking place and public interest litigation is playing a large part in bringing about this change. It is through public interest litigation that the problems of the poor are now coming to the forefront and the entire theatre of the law is changing. It holds out great possibilities for the future. This writ petition is one such instance of public interest litigation. [470 G-H; 471 A-C]

2. It is true that construction industry does not find a place on the schedule to the Employment of Children Act, 1938 and the Prohibition enacted in section 3 sub-section (3) of that Act against the employment of a child who has not completed his fourteenth year cannot apply to employment in construction industry. But, apart altogether from the requirement of Convention No. 59 of the International Labour Organisation and ratified by India, Article 24 of the Constitution provides that no child below the age of 14 shall be employed to work in any factory or mine or engaged in any other hazardous employment. This is a constitutional prohibition which, even if not followed up by appropriate legislation, must operate *propiro vigore* and construction work being plainly and indubitably a hazardous employment, it is clear that by reason of this Constitutional prohibition, no child below the age of 14 years can be allowed to be engaged in construction work. Therefore, notwithstanding the absence of specification of construction industry in the Schedule to the Employment of Children Act 1938, no child below the age of 14 years can be employed in construction work and the Union of India as also every state Government must ensure that this constitutional mandate is not violated in any part of the Country. [474 A-F]

3. Magistrates and Judges in the country must view violations of labour laws with strictness and whenever any violations of labour laws are established before them, they should punish the errant employers by imposing adequate punishment. The labour laws are enacted for improving the conditions of workers and the employers cannot be allowed to buy off immunity against violations of labour laws by paying a paltry fine which they would not mind paying, because by violating the labour laws they would be making profit which would far exceed the amount of the fine. If violations of labour laws are to be punished with meagre fines, it would be impossible to ensure observance of the labour laws and the labour laws would be reduced to nullity. They would remain merely paper tigers without any teeth or claws. [476 E-H]

4:1. It is true that the complaint of the petitioners in the writ petition is in regard to the violations of the provisions of various labour laws designed for the welfare of workmen, and therefore from a strictly traditional point of view it would be only the workmen whose legal rights are violated who would be entitled to approach the court for judicial redress. But the traditional rule of standing which confines access to the judicial process only to those to whom legal injury is caused or legal wrong is done has now been jettisoned by the Supreme Court and the narrow confines within which the rule of standing was imprisoned for long years as a result of inheritance of the Anglo-saxon system of jurisprudence have been broken and a new dimension has been given to the doctrine of

A *locus standi* which has revolutionised the whole concept of access to justice in a way not known before to the Western System of jurisprudence. [477 F-H]

4:2. Having regard to the peculiar socio-economic conditions prevailing in the country where there is considerable poverty, illiteracy and ignorance obstructing and impeding accessibility to the judicial process, it would result in closing the doors of justice to the poor and deprived sections of the community if the traditional rule of standing evolved by Anglo-Saxon jurisprudence that only a person wronged can sue for judicial redress were to be blindly adhered to and followed, and it is therefore necessary to evolve a new strategy by relaxing this traditional rule of standing in order that justice may become easily available to the lowly and the lost. [478 A-C]

C 4:3. Where a person or class of persons to whom legal injury is caused or legal wrong is done is by reason of poverty, disability or socially or economically disadvantaged position not able to approach the Court for judicial redress, any member of the public acting bonafide and not out of any extraneous motivation may move the Court for judicial redress of the legal injury or wrong sufferred by such person or class of persons and the judicial process may be set in motion by any public spirited individual or institution even by addressing a letter to the D court. Where judicial redress is sought of a legal injury or legal wrong suffered by a person or class of persons who by reason of poverty, disability or socially or economically disadvantaged position are unable to approach the court and the court is moved for this purpose by a member of a public by addressing a letter drawing the attention of the court to such legal injury or legal wrong, court would cast aside all technical rules of procedure and entertain the letter as a writ petition on the judicial side and take action upon it. [478 C-F]

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Here, the workmen whose rights are said to have been violated and to whom a life of basic human dignity has been denied are poor, ignorant, illiterate humans who, by reason of their poverty and social and economic disability, are unable to approach the courts for judicial redress and hence the petitioners have, under the liberalised rule of standing, *locus standi* to maintain the present writ petition espousing the cause of the workmen. The petitioners are not acting F *mala fide* or out of extraneous motives since the first petitioner is admittedly an organisation dedicated to the protecting and enforcement of Fundamental Rights and making Directive Principles of State Policy enforceable and justiciable. There can be no doubt that it is out of a sense of public service that the present litigation has been brought by the petitioners and it is clearly maintainable. [478 G-H; 479 A-B]

G 4:4. The Union of India, the Delhi Administration and the Delhi Development Authority cannot escape their obligation to the workmen to ensure observance of the provisions of various labour law by its contractors and for non-compliance with the laws by the contractors, the workmen would clearly have a cause of actions against them as principal employers. So far as to Contract Labour (Regulation and Abolition) Act, 1970 is concerned, section 20 is clear H that if any amenity required to be provided under sections 16 to 18 or 19 for the

benefit of the workmen employed in an establishment is not provided by the contractor, the obligation to provide such amenity rests on the principal employer. [479 C-D]

Sections 17 and 18 of the Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 also make principal employer liable to make payment of the wages to the wages to the migrant workmen employed by the contractor as also to pay the allowances provided under sections 14 and 15 and to provide the facilities specified in section 16 of such migrant workmen. [479 F-G]

Article 24 of the Constitution embodies a Fundamental Right which is plainly and indubitably enforceable against every one and by reason of its compulsive mandate, no one can employ a child below the age of 14 years in a hazardous employment. Since, construction work is a hazardous employment, no child below the age of 14 years can be employed in constructions work and therefore, not only are the contractors under a constitutional mandate not to employ any child below the age of 14 years, but it is also the duty of the Union of India, the Delhi Administration and the Delhi Development Authority to ensure that this constitutional obligation is obeyed by the contractors to whom they have entrusted the construction work of the various Asiad Projects. Similarly the respondents must ensure compliance with by the contractors of the Provisions of the equal Remuneration Act, 1946 as they express the principle of equality embodied in Article 14 of the Constitution. [479 G-H; 480 A-D]

No doubt, the contractors are liable to pay the minimum wage to the workmen employed by them under the Minimum Wage Act 1948 but the Union of India, the Delhi Administration and the Delhi Development Authority who have entrusted the construction work to the contractors would equally be responsible to ensure that the minimum wage is paid to the workmen by their contractors. [480 G-H]

5:1. It is true that the present writ petition cannot be maintained by the petitioners unless they can show some violation of a Fundamental Right, for it is only for enforcement right that a writ petition can be maintained in this Court under Article 32. But, certainly the following complaints do legitimately form the subject matter of a writ petition under Article 32; namely, (i) the complaint of violation of Article 24 based on the averment that children below the age of 14 years are employed in the construction work of the Asiad Projects, (ii) allegation of non-observance of the provisions of the Equal Remuneration Act 1946, is in effect and substance a complaint of breach of the principle of equality before the law enshrined in Article 14; and (iii) the complaint of non-observance of the provisions of the Contract Labour (Regulation and Abolition) Act 1970 and the Inter-state Migrant Workmen (Regulations of Employment and Conditions of Service) Act 1979 as it is a complaint relating to violation of Article 21. Now the rights and benefits conferred on the workmen employed by a contractor under the provisions of the Contract Labour (Regulation and Abolition Act 1970 and the Inter-State Migrant Workmen Regulation of Employment and Conditions of Service) Act 1979 which became enforceable w.e.f. 4-6-1982 are clearly intended to ensure basic

A human dignity to the workmen and if the workmen are deprived of any of these rights and benefits to which they are entitled under the provisions of these two pieces of social welfare legislation, that would clearly be a violation of Article 21 by the Union of India, the Delhi Administration and the Delhi Development Authority which, as principal employers, are made statutorily responsible for securing such rights and benefits to the workmen; and (iv) the complaint in regard to non-payment of minimum wage to the workmen under the Minimum Wages Act 1948, B is also one relating to breach of a Fundamental Right enshrined in Article 23 which is violated by non-payment of minimum wage to the workmen.

[481 D-H; 482 A-F]

Maneka Gandhi v. *Union of India*, [1978] 2 SCR 663; *Francis Coralie Mullin* v. *The Administrator of Union Territory of Delhi & Others*, [1981] 2 SCR 516, applied.

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5:2. Many of the fundamental rights enacted in Part III operate as limitations on the power of the State and impose negative obligations on the State not to encroach on individual liberty and they are enforceable only against the State. But there are certain fundamental rights conferred by the Constitution which are enforceable against the whole world and they are to be found *inter alia* in Articles 17, 23 and 24. [483 C-D]

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5:3. Article 23 is clearly designed to protect the individual not only against the State but also against other private citizens. Article 23 is not limited in its application against the State but it prohibits "traffic in human beings and begar and other similar forms of forced labour" practised by anyone else. The prohibition against "traffic in human being and begar and other similar forms of forced labour" is clearly intended to be a general prohibition, total in its effect and all pervasive in its range and it is enforceable not only against the State but E also against any other person indulging in any such practice. [484 G-H; 485 A]

5:4. The word "begar" in Article 23 is not a word of common use in English language, but a word of Indian origin which like many other words has found its way in English vocabulary. It is a form of forced labour under which a person is compelled to work without receiving any remuneration. Begar is thus F clearly a film of forced labour. [485 E-G]

S. Vasudevan v. *S.D. Mittal* AIR 1962 Bom. 53 applied.

5:5. It is not merely 'begar' which is constitutionally prohibited by Article 23 but also all other similar forms of forced labour. Article 23 strikes at forced labour in whatever form it may manifest itself, because it is violative of G human dignity and is contrary to basic human values. To contend that exacting labour by passing some remuneration, though it be inadequate will not attract the provisions of Article 23 is to unduly restrict the amplitude of the prohibition against forced labour enacted in Article 23. The contention is not only ill-founded, but does not accord with the principle enunciated by this Court in *Maneka Gandhi* v. *Union of India* that when interpreting the provisions of the H Constitution conferring fundamental rights, the attempt of the Court should be to expand the reach and ambit of the fundamental rights rather than to attenuate

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their meaning and content. The Constitution makers did not intend to strike only at certain forms of forced labour leaving it open to the socially or economically powerful sections of the community to exploit the poor and weaker sections by resorting to other forms of forced labour. There could be no logic or reason in enacting that if a person is forced to give labour or service to another without receiving any remuneration at all, it should be regarded as a pernicious practice sufficient to attract the condemnation of Article 23, but if some remuneration is paid for it, then it should be outside the inhibition of that Article. To interpret Article 23 as contended would be reducing Article 23 to a mere rope of sand, for it would then be the easiest thing in an exploitative society for a person belonging to a socially or economically dominant class to exact labour or service from a person belonging to the deprived and vulnerable section of the community by paying a negligible amount of remuneration and thus escape the rigour of Art. 23. It would not be right to place on the language of Article 23 an interpretation which would emasculate its beneficient provisions and defeat the very purpose of enacting them. Article 23 is intended to abolish every form of forced lobour. [486 E-H; 487 A-D]

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5:6. The words "other similar forms of forced labour" are used in Article 23 not with a view to importing the particular characteristic of 'begar' that labour or service should be exacted without payment of any remuneration but with a view to bringing within the scope and ambit of that Article all other forms of forced labour and since 'begar' is one form of forced labour, the Constitution makers used the words "other similar forms of forced labour". If the requirement that labour or work should be exacted without any remuneration were imported in other forms of forced labour. they would straight-away come within the meaning of the word 'begar' and in that event there would be no need to have the additional words "othe. similar forms of forced labour." These words would be rendered futile and meaningless and it is a well recognised rule of interpretation that the court should avoid a construction which has the effect of rendering any words used by the legislature superfluous redundant. [487 E-G]

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The object of adding these words was clearly to expand the reach and content of Article 23 by including, in addition to 'begar', other forms of forced labour within the prohibition of that Article. Every form of forced labour, 'begar', or otherwise, is within the inhibition of Article 23 and it makes no difference whether the person who is forced to give his labour or service to another is remunerated or not. Even if remuneration is paid, labour supplied by a person would be hit by Article 23 if it is forced labour, that is; labour supplied not willingly but as a result of force or compulsion. For example, where a person has entered into a contract of service with another for a period of three years and he wishes to discontinue serving such other person before the expiration of the period of three years, if a law were to provide that in such a case the contract shall be specifically enforced and he shall be compelled to serve for the full period of three years, it would clearly amount to forced labour and such a law would be void as offending Article 23. That is why specific performance of a contract of service cannot be enforced against an employee

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A and the employee cannot be forced by compulsion of law to continue to serve the employer. Of course, if there is a breach of the contract of service, the employee would be liable to pay damages to the employer but he cannot be forced to continue to serve the employer without breaching the injunction of Article 23. [487 H; 488 A-D]

B *Baily* v. *Aalabama*, 219 US 219:55 Law Ed. 191; quoted with approval,

5:7. Even if a person has contracted with another to perform service and there is consideration for such service in the shape of liquidation of debt or even remuneration, he cannot be forced by compulsion of law or otherwise, to continue to perform such service, as that would be forced labour within the inhibition of C Article 23, which strikes at every form of forced labour even if it has its origin in a contract voluntarily entered into by the person obligated to provide labour or service, for the reasons, namely; (i) it offends against human dignity to compel a person to provide labour or service to another if he does not wish to do so, even though it be breach of the contract entered into by him; (ii) there should be no serfdom or involuntary servitude in a free democratic India which respects the dignity of the individual and the worth of the human person; (iii) in a country D like India where there is so much poverty and unemployment and there is no equality of bargaining power, a contract of service may appear on its face voluntary but it may, in reality, be involuntary, because while entering into the contract the employee by reason of his economically helpless condition, may have been faced with Hobson's choice, either to starve or to submit to the exploitative terms dictated by the powerful employer. It would be a travesty of justice to hold the employee in such a case to the terms of the contract and to compel him to serve the employer even though he may not wish to do so. That would aggra- E vate the inequality and injustice from which the employee even otherwise suffers on account of his economically disadvantaged position and lend the authority of law to the exploitation of the poor helpless employee by the economically powerful employer. Article 23 therefore, provides that no one shall be forced to provide labour or service against his will, even though it be under a contractor of service. [490 C-H]

F *Pollock* v. *Williams*, 322 US 4:88 Lawyers Edn. 1095; referred to.

5:8. Where a person provides labour or services to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23. Such a person would be entitled to come to the court for enforcement of his fundamental right under Article 23 by asking the court to direct payment G of the minimum wage to him so that the labour or service provided by him ceases to be 'forced labour' and the breach of Article 23 is remedied. [492 F-G]

5:9. Ordinarily no one would willingly supply labour or service to another for less than the minimum wage, when he knows that under the law he is entitled to get minimum wage for the labour or service provided by him. Therefore when a person provides labour or service to another against receipt of remu- H neration which is less than the minimum wage, he is acting under the force of

some compulsion which drives him to work though he is paid less than what he is entitled under law to receive. What Article 23 prohibits is 'forced labour' that is labour or service which a person is forced to provide." [491 B-D] A

5:10. 'Force' which would make such labour or service 'forced labour' may arise in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternative and compels him to adopt one particular course of action may properly be regarded as 'force' and if labour or service is compelled as a result of such 'force', it would be 'forced labour'. Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or to feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly 'forced labour'. The word 'forced' should not be read in a narrow and restricted manner so as to be confined only to physical or legal 'force' particularly when the national character, its fundamental document has promised to build a new socialist republic where there will be socio-economic justice for all and every one shall have the right to work, to education and to adequate means of livelihood. The constitution makers have given us one of the most remarkable documents in history for ushering in a new socio-economic order and the Constitution which they have forged for us has a social purpose and an economic mission and, therefore, every word or phrase in the Constitution must be interpreted in a manner which would advance the socio-economic objective of the Constitution. It is a fact that in a capitalist society economic circumstances exert much greater pressure on an individual in driging him to a particular course of action than physical compulsion or force of legislative provision. The word 'force' must therefore be construed to include not only physical or legal force but force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage. Of course, if a person provides labour or service to another against receipt of the minimum wage, it would not be possible to say that the labour or service provided by him is 'forced labour' because he gets what he is entitled under law to receive. No inference can reasonably be drawn in such a case that he is forced to provide labour or service for the simple reason that would be providing labour or service against receipt of what is lawfully payable to him just like any other person who is not under the force of any compulsion. [491 D-H; 492 A-E] B C D E F G

6. Wherever any fundamental right which is enforceable against private individuals such as, for example, a fundamental right enacted in Article 17 or 23 H

A or 24 is being violated, it is the constitutional obligation of the State to take necessary steps for the purpose of interdicting such violation and ensuring observance of the fundamental right by the private individual who is transgressing the same. The fact that the person whose fundamental right is violated can always approach the court for the purpose of enforcement of his fundamental right, cannot absolve the State from its constitutional obligation to see that there is no violation of the fundamental right of such person, particularly when he belongs to
B the weaker section of humanity and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. [493 A-D]

ORIGINAL JURISDICTION : Writ Petition No. 8143 of 1981.

(Under article 32 of the Constitution of India)

C

Govind Mukhoty in person and *A.K. Ganguli* for the petitioner.

Miss A. Subhashini for Respondent No. 1.

D *N.C. Talukdar* and *R.N. Poddar* for Respondents Nos. 5 and 6.

Sardar Bahadur Saharya and *Vishnu Bahadur Saharya* for Respondent No. 7.

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The Judgment of the Court was delivered by

BHAGWATI, J. This is a writ petition brought by way of public interest litigation in order to ensure observance of the provisions of
F various labour laws in relation to workmen employed in the construction work of various projects connected with the Asian Games. The matter was brought to the attention of the Court by the 1st petitioner which is an organisation formed for the purpose of protecting democratic rights by means of a letter addressed to one of us (Bhagwati, J.). The letter was based on a report made by a team of
G three social scientists who were commissioned by the 1st petitioner for the purpose of investigating and inquiring into the conditions under which the workmen engaged in the various Asiad Projects were working. Since the letter addressed by the 1st petitioner was based on the report made by three social scientists after personal
H investigation and study, it was treated as a writ petition on the judicial side and notice was issued upon it *inter alia* to the Union of India, Delhi Development Authority and Delhi Administration which

were arrayed as respondents to the writ petition. These respondents filed their respective affidavits in reply to the allegations contained in the writ petition and an affidavit was filed on behalf of the petitioner in rejoinder to the affidavits in reyly and the writ petition was argued before us on the basis of these pleadings.

Before we proceed to deal with the facts giving rise to this writ petition, we may repeat what we have said earlier in various orders made by us from time to time dealing with public interest litigation. We wish to point out with all the emphasis at our command that public interest litigation which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. That would be destructive of the Rule of Law which forms one of the essential elements of public interest in any democratic form of government. The Rule of Law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the *status quo* under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the Rule of Law is meant for them also, though today it exists only on paper and not in reality. If the sugar barons and the alcohol kings have the Fundamental Right to carry on their business and to fatten their purses by exploiting the consuming public, have the 'chamars' belonging to the lowest strata of society no Fundamental Right to earn an honest living through their sweat and toil ? The former can approach the courts with a formidable army of distinguished lawyers paid in four or five figures per day and if their right to exploit is upheld against the government under the label of Fundamental Right, the courts are praised for their boldness

A and courage and their independence and fearlessness are applauded and acclaimed. But, if the Fundamental Right of the poor and helpless victims of injustice is sought to be enforced by public interest litigation, the so called champions of human rights frown upon it as waste of time of the highest court in the land, which, according to them, should not engage itself in such small and trifling B matters. Moreover, these self-styled human rights activists forget that civil and political rights, priceless and invaluable as they are for freedom and democracy, simply do not exist for the vast masses of our people. Large numbers of men, women and children who constitute the bulk of our population are today living a sub-human C existence in conditions of abject poverty: utter grinding poverty has broken their back and sapped their moral fibre. They have no faith in the existing social and economic system. What civil and political rights are these poor and deprived sections of humanity going to enforce ? This was brought out forcibly by W. Paul Gormseley at the Silver Jubilee Celebrations of the Universal Declaration of D Human Rights at the Banaras Hindu University :

> "Since India is one of those countries which has given a pride of place to the basic human rights and freedoms in its Constitution in its chapter on Fundamental Rights and on E the Directive Principles of State Policy and has already completed twenty-five years of independence, the question may be raised whether or not the Fundamental Rights enshrined in our Constitution have any meaning to the millions of our people to whom food, drinking water, timely medical facilities and relief from disease and disaster, education and job F opportunities still remain unavoidable. We, in India, should on this occasion study the Human Rights declared and defined by the United Nations and compare them with the rights available in practice and secured by the law of our country."

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The only solution for making civil and political rights meaningful to these large sections of society would be to remake the material conditions and restructure the social and economic order so that they may be able to realise the economic, social and cultural rights. H There is indeed close relationship between civil and political rights on the one hand and economic, social and cultural rights on the other and this relationship is so obvious that the International

Human Rights Conference in Tehran called by the General Assembly in 1968 declared in a final proclamation :

> "Since human rights and fundamental freedoms are indivisible, the full realisation of civil and political rights without the enjoyment of economic, social and cultural rights is impossible."

Of course, the task of restructuring the social and economic order so that the social and economic rights become a meaningful reality for the poor and lowly sections of the community is one which legitimately belongs to the legislature and the executive, but mere initiation of social and economic rescue programmes by the executive and the legislature would not be enough and it is only through multi-dimensional strategies including public interest litigation that these social and economic rescue programmes can be made effective. Public interest litigation, as we conceive it, is essentially a co-operative or collaborative effort on the part of the petitioner, the State or public authority and the court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them. The State or public authority against whom public interest litigation is brought should be as much interested in ensuring basic human rights, constitutional as well as legal, to those who are in a socially and economically disadvantaged position, as the petitioner who brings the public interest litigation before the Court. The state or public authority which is arrayed as a respondent in public interest litigation should, in fact, welcome it, as it would give it an opportunity to right a wrong or to redress an injustice done to the poor and weaker sections of the community whose welfare is and must be the prime concern of the State or the public authority.

There is a misconception in the minds of some lawyers, journalists and men in public life that public interest litigation is unnecessarily cluttering up the files of the court and adding to the already staggering arrears of cases which are pending for long years and it should not therefore be encouraged by the court. This is, to our mind, a totally perverse view smacking of *elitist* and *status quoist* approach. Those who are decrying public interest litigation do not seem to realise that courts are not meant only for the rich and the well-to-do, for the landlord and the gentry, for the business magnate

A and the industrial tycoon, but they exist also for the poor and the down-trodden the have-nots and the handicapped and the half-hungry millions of our countrymen. So far the courts have been used only for the purpose of vindicating the rights of the wealthy and the affluent. It is only these privileged classes which have been able to approach the courts for protecting their vested interests. It B is only the moneyed who have so far had the golden key to unlock the doors of justice. But, now for the first time the portals of the court are being thrown open to the poor and the down-trodden, the ignorant and the illiterate, and their cases are coming before the courts through public interest litigation which has been made possible by the recent judgment delivered by this Court in Judges Appoint- G ment and Transfer cases. Millions of persons belonging to the deprived and vulnerable sections of humanity are looking to the courts for improving their life conditions and making basic human rights meaningful for them. They have been crying for justice but their cries have so far been in the wilderness. They have been suffer- D ing injustice silently with the patience of a rock, without the strength even to shed any tears. Mahatma Gandhi once said to Gurudev Tagore, "I have had the pain of watching birds, who for want of strength could not be coaxed even into a flutter of their wings. The human bird under the Indian sky gets up weaker than when he pretended to retire. For millions it is an eternal trance." This is true E of the 'human bird' in India even today after more than 30 years of independence. The legal aid movement and public interest litigation seek to bring justice to these forgotten specimens of humanity who constitute the bulk of the citizens of India and who are really and truly the "People of India" who gave to themselves this magnificent Constitution. It is true that there are large arrears pending in the F courts but, that cannot be any reason for denying access to justice to the poor and weaker sections of the community. No State has a right to tell its citizens that because a large number of cases of the rich and the well-to-do are pending in our courts, we will not help the poor to come to the courts for seeking justice until the staggering load of cases of people who can afford, is disposed of. The time G has now come when the courts must become the courts for the poor and struggling masses of this country They must shed their character as upholders of the established order and the *status quo*. They must be sensitised to the need of doing justice to the large masses of people to whom justice has been denied by a cruel and heartless H society for generations. The realisation must come to them that

social justice is the signature tune of our Constitution and it is their solemn duty under the Constitution to enforce the basic human rights of the poor and vulnerable sections of the community and actively help in the realisation of the constitutional goals. This new change has to come if the judicial system is to become an effective instrument of social justice, for without it, it cannot survive for long. Fortunately, this change is gradually taking place and public interest litigation is playing a large part in bringing about this change. It is through public interest litigation that the problems of the poor are now coming to the fore front and the entire theatre of the law is changing. It holds out great possibilities for the future. This writ petition is one such instance of public interest litigation.

The Asian Games take place periodically in different parts of Asia and this time India is hosting the Asian Games. It is a highly prestigious undertaking and in order to accomplish it successfully according to international standards, the Government of India had to embark upon various construction projects which included building of fly-overs, stadia, swimming pool, hotels and Asian Games village complex. This construction work was framed out by the Government of India amongst various Authorities such as the Delhi Administration, the Delhi Development Authority and the New Delhi Municipal Committee. It is not necessary for the purpose of the present writ petition to set out what particular project was entrusted to which authority because it is not the purpose of this writ petition to find fault with any particular authority for not observing the labour laws in relation to the workmen employed in the projects which are being executed by it, but to ensure that in future the labour laws are implemented and the rights of the workers under the labour laws are not violated. These various authorities to whom the execution of the different projects was entrusted engaged contractors for the purpose of carrying out the construction work of the projects and they were registered as principal employers under section 7 of the Contract Labour (Regulation and Abolition) Act, 1970. The contractors started the construction work of the projects and for the purpose of carrying out the construction work, they engaged workers through jamadars. The jamadars brought the workers from different parts of India and particularly the States of Rajasthan, Uttar Pradesh and Orissa and got them employed by the contractors. The workers were entitled to a minimum wage of Rs.

A 9.25 per day, that being the minimum wage fixed for workers employed on the construction of roads and in building operations but the case of the petitioners was that the workers were not paid this minimum wage and they were exploited by the contractors and the jamadars. The Union of India in the affidavit reply filed on its behalf by Madan Mohan; Under Secretary, Ministry of Labour asserted that B the contractors did pay the minimum wage of Rs. 9.25 per day but frankly admitted that this minimum wage was paid to the jamadars through whom the workers were recruited and the jamadars deducted rupee one per day per worker as their commission and paid only Rs. 8.25 by way of wage to the workers. The result was that in fact the workers did not get the minimum wage of Rs. 9.25 per day. The C petitioners also alleged in the writ petition that the provisions of the Equal Remuneration Act, 1976 were violated and women workers were being paid only Rs. 7/- per day and the balance of the amount of the wage was being misappropriated by the jamadars. It was also pointed out by the petitioners that there was violation of D Article 24 of the Constitution and of the provisions of the Employment of Children Act, 1938 in as much as children below the age of 14 years were employed by the contractors in the construction work of the various projects. The petitioners also alleged violation of the provisions of the Contract Labour (Regulation and Abolition) Act 1970 and pointed out various breaches of those provisions by the E contractors which resulted in deprivation and exploitation of the workers employed in the construction work of most of the projects. It was also the case of the petitioners that the workers were denied proper living conditions and medical and other facilities to which they were entitled under the provisions of the Contract Labour (Regulation and Abolition) Act 1970. The petitioners also complain- F ed that the contractors were not implementing the provisions of the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 though that Act was brought in force in the Union Territory of Delhi as far back as 2nd October 1980. The report of the team of three social scientists on which the writ petition G was based set out various instances of violations of the provisions of the Minimum Wages Act, 1948, the Equal Remuneration Act 1976, Article 24 of the Constitution, The Employment of Children Act1970, and the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979.

H These averments made on behalf of the petitioners were denied in the affidavits in reply filed on behalf of the Union of India, the

Delhi Administration and the Delhi Development Authority. It was asserted by these authorities that so far as the Equal Remuneration Act 1976 and the Contract Labour (Regulation and Abolition) Act 1970 were concerned, the provisions of these labour laws were being complied with by the contractors and whenever any violations of these labour laws were brought to the attention of the authorities as a result of periodical inspections carried out by them, action by way of prosecution was being taken against the contractors. The provisions of the Minimum Wages Act 1948 were, according to the Delhi Development Authority, being observed by the contractors and it was pointed out by the Delhi Development Authority in its affidavit in reply that the construction work of the projects entrusted to it was being carried out by the contractors under a written contract entered into with them and this written contract incorporated "Model Rules for the Protection of Health and Sanitary Arrangements for Workers employed by Delhi Development Authority or its Contractors" which provided for various facilities to be given to the workers employed in the construction work and also ensured to them payment of minimum wa ge The Delhi Administration was not so categorical as the Delhi Development Authority in regard to the observance of the provisions of the Minimum Wages Act 1948 and in its affidavit in reply it conceded that the jamadars through whom the workers were recruited might be deducting rupee one per day per worker from the minimum wage payable to the workers. The Union of India was however more frank and it clearly admitted in its affidavit in reply that the jamadars were deducting rupee one per day per worker from the wage payable to the workers with the result that the workers did not get the minimum wage of Rs. 9.25 per day and there was violation of the provisions of the Minimum Wages Act, 1948.

So far as the Employment of Children Act 1938 is concerned the case of the Union of India, the Delhi Administration and the Delhi Development Authority was that no complaint in regard to the violation of the provisions of that Act was at any time received by them and they disputed that there was any violation of these provisions by the contractors. It was also contended on behalf of these Authorities that the Employment of Children Act 1938 was not applicable in case of employment in the construction work of these projects, since construction industry is not a process specified in the Schedule and is therefore not within the provisions of sub-

section (3) of section 3 of that Act. Now unfortunately this contention urged on behalf of the respondents is well founded, because construction industry does not find a place in the Schedule to the Employment of Children Act 1938 and the prohibition enacted in section 3 sub-section (3) of that Act against the employment of a child who has not completed his fourteenth year cannot apply to employment in construction industry. This is a sad and deplorable omission which, we think, must be immediately set right by every State Government by amending the Schedule so as to include construction industry in it in exercise of the power conferred under section 3A of the Employment of Children Act, 1938. We hope and trust that every State Government will take the necessary steps in this behalf without any undue delay, because construction work is clearly a hazardous occupation and it is absolutely essential that the employment of children under the age of 14 years must be prohibited in every type of construction work. That would be in consonance with Convention No. 59 adopted by the International Labour Organisation and ratified by India. But apart altogether from the requirement of Convention No. 59, we have Article 24 of the Constitution which provides that no child below the age of 14 shall be employed to work in any factory or mine or engaged in any other hazardous employment. This is a constitutional prohibition which, even if not followed up by appropriate legislation, must operate *proprio vigore* and construction work being plainly and indubitably a hazardous employment, it is clear that by reason of this constitutional prohibition, no child below the age of 14 years can be allowed to be engaged in construction work. There can therefore be no doubt that notwithstanding the absence of specification of construction industry in the Schedule to the Employment of Children Act 1938, no child below the age of 14 years can be employed in construction work and the Union of India as also every State Government must ensure that this constitutional mandate is not violated in any part of the country. Here, of course, the plea of the Union of India, the Delhi Administration and the Delhi Development Authority was that no child below the age of 14 years was at any time employed in the construction work of these projects and in any event no complaint in that behalf was received by any of these Authorities and hence there was no violation of the constitutional prohibition enacted in Article 24. So far as the complaint in regard to non-observance of the provisions of the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 was concerned, the defence of the Union of India, the Delhi Administration and the Delhi Development Authority that though this Act had come into force in the

Union Territory of Delhi with effect from 2nd October 1980, the power to enforce the provisions of the Act was delegated to the Administrator of the Union Territory of Delhi only on 14th July 1981 and thereafter also the provisions of the Act could not been enforced because the Rules to be made under the Act had not been finalised until 4th June 1982. It is difficult to understand as to why in the case of beneficient legislation like the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 it should have taken more than 18 months for the Government of India to delegate the power to enforce the provisions of the Act to the Administrator of the Union Territory of Delhi and another almost 12 months to make the Rules under the Act. It was well known that a large number of migrant workmen coming from different States were employed in the construction work of various Asiad projects and if the provisions of a social welfare legislation like the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 were applied and the benefit of such provisions made available to these migrant workmen, it would have gone a long way towards ameliorating their conditions of work and ensuring them a decent living with basic human dignity. We very much wished that the provisions of this Act had been made applicable earlier to the migrant workmen employed in the construction work of these projects though we must confess that we do not see why the enforcement of the provisions of the Act should have been held up until the making of the Rules. It is no doubt true that there are certain provisions in the Act which cannot be enforced unless there are rules made under the Act but equally there are other provisions which do not need any prescription by the Rules for their enforcement and these latter provisions could certainly have been enforced by the Aministrator of the Union Territory of Delhi in so far as migrant workmen employed in these projects were concerned. There can be no doubt that in any event from and after 4th June, 1982 the provisions of this beneficient legislation have become enforceable and the migrant workmen employed in the construction work of these projects are entitled to the rights and benefits conferred upon them under those provisions. We need not point out that so far as the rights and benefits conferred upon migrant workmen under the provisions of section 13 to 16 of the Act are concerned, the responsibility for ensuring such rights and benefits rests not only on the contractors but also on the Union of India, the Delhi Administration or the Delhi Development Authority who is

A the principal employer in relation to the construction work entrusted by it to the contractors. We must confess that we have serious doubts whether the provisions of this Act are being implemented in relation to the migrant workmen employed in the construction work of these projects and we have therefore by our Order dated 11th May 1982 appointed three Ombudsmen for the purpose of making B periodic inspection and reporting to us whether the provisions of this Act are being implemented at least from 4th June 1982.

We must in fairness point out that the Union of India has stated in its affidavit in reply that a number of prosecution have C been launched against the contractors for violations of the provision of various labour laws and in Annexure I to its affidavit in reply it has given detailed particulars of such prosecutions. It is apparent from the particulars given in this Annexure that the prosecutions launched against the contractors were primarily for offences such as non-maintenance of relevant registers non-provision of welfare and D health facilities such as first aid box, latrines, urinals etc. and non-issue of wage slips. We do not propose to go into the details of these prosecutions launched against the contractors but we are shocked to find that in cases of violations of labour laws enacted for the benefit of workmen, the Magistrates have been imposing only small fines of Rs. 200/- there abouts. The Magistrates seem to view the E violations of labour laws with great indifference and unconcern as if they are trifling offences undeserving of judicial severity. They seem to over-look the fact labour laws are enacted for improving the conditions of workers and the employers cannot be allowed to buy off immunity against violations of labour laws by paying a paltry fine which they would not mind paying, because by violations the labour F laws they would be making profit which would far exceed the amount of the fine. If violations of labour laws are going to be punished only by meagre fines, it would be impossible to ensure observance of the labour laws and the labour laws would be reduced to nullity. They would remain merely paper tigers without any teeth or claws. We would like to impress upon the Magistrates and Judges in the G country that violations of labour laws must be viewed with strictness and whenever any violations of labour laws are established before them, they should punish the errant employers by imposing adequate punishment.

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We may conveniently at this stage, before proceeding to examine the factual aspects of the case, deal with two preliminary

objections raised on behalf of the respondents against the maintainability of the writ petition. The first preliminary objection was that the petitioners had no locus standi to maintain the writ petition since, even on the averments made in the writ petition, the rights said to have been violated were those of the workers employed in the construction work of the various Asiad projects and not of the petitioners and the petitioners could not therefore have any cause of action. The second preliminary objection urged on behalf of the respondents was that in any event no writ petition could lie against the respondents, because the workmen whose rights were said to have been violated were employees of the contractors and not of the respondents and the cause of action of the workmen, if any, was therefore against the contractors and not against the respondents. It was also contended as part of this preliminary objection that no writ petition under article 32 of the Constitution could lie against the respondents for the alleged violations of the rights of the workmen under the various labour laws, and the remedy, if any, was only under the provisions of those laws. These two preliminary objections were pressed before us on behalf of the Union of India, the Delhi Administration and the Delhi Development Authority with a view to shutting out an inquiry by this Court into the violations of various labour laws alleged in the writ petition, but we do not think there is any substance in them and they must be rejected. Our reasons for saying so are as follows :

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The first preliminary objection raises the question of locus standi of the petitioners to maintain the writ petition. It is true, that the complaint of the petitioners in the writ petition is in regard to the violations of the provisions of various labour laws designed for the welfare of workmen and therefore from a strictly traditional point of view, it would be only the workmen whose legal rights are violated who would be entitled to approach the court for judicial redress. But the traditional rule of standing which confines access to the judicial process only to those to whom legal injury is caused or legal wrong is done has now been jetisoned by this Court and the narrow confines within which the rule of standing was imprisoned for long years as a result of inheritance of the Anglo-Saxon System of jurisprudence have been broken and a new dimension has been given to the doctrine of locus standi which has revolutionised the whole concept of access to justice in a way not known before to the Western System of jurisprudence. This Court

A has taken the view that, having regard to the peculiar socio-economic conditions prevailing in the country where there is, considerable poverty, illiteracy and ignorance obstructing and impeding accessibility to the judicial process, it would result in closing the doors of justice to the poor and deprived sections of the community if the traditional rule of standing evolved by Anglo-
B Saxon jurisprudence that only a person wronged can sue for judicial redress were to be blindly adhered to and followed, and it is therefore necessary to evolve a new strategy by relaxing this traditional rule of standing in order that justice may became easily available to the lowly and the lost. It has been held by this Court in its recent judgment in the Judges Appointment and Transfer case, in a major
C break-through which in the years to come is likely to impart new significance and relevance to the judicial system and to transform it into as instrument of socio-economic change, that where a person or class of persons to whom legal injury is caused or legal wrong is done is by reason of poverty, disability or socially or economically disadvantaged position not able to approach the Court for judicial
D redress, any member of the public acting bona fide and not out of any extraneous motivation may move the Court for judicial redress of the legal injury or wrong suffered by such person or class of persons and the judicial process may be set in motion by any public spirited individual or institution even by addressing a letter to the court. Where judicial redress is sought of a legal injury or legal
E wrong suffered by a person or class of persons who by reason of poverty, disability or socially or economically disadvantaged position are unable to approach the court and the court is moved for this purpose by a member of a public by addressing a letter drawing the attention of the court to such legal injury or legal
F wrong, court would cast aside all technical rules of procedure and entertain the letter as a writ petition on the judicial side and take action upon it. That is what has happened in the present case. Here the workmen whose rights are said to have been violated and to whom a life of basic human dignity has been denied are poor, ignorant, illiterate humans who, by reason of their poverty and social
G and economic disability, are unable to approach the courts for judicial redress and hence the petitioners, have under the liberalised rule of standing, locus standi to maintain the present writ petition espousing the cause of the workmen. It is not the case of the
H respondents that the petitioners are acting mala fide or out of extraneous motives and in fact the respondents cannot so allege, since

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the first petitioner is admittedly an organisation dedicated to the protection and enforcement of Fundamental Rights and making Directive Principles of State Policy enforceable and justiciable. There can be no doubt that it is out of a sense of public service that the present litigation has been brought by the petitioners and it is clearly maintainable. B

We must then proceed to consider the first limb of the second preliminary objection. It is true that the workmen whose cause has been championed by the petitioners are employees of the contractors but the Union of India, the Delhi Administration and the Delhi Development Authority which have entrusted the construction work of Asiad projects to the contractors cannot escape their obligation for observance of the various labour laws by the contractors. So far as the Contract Labour (Regulation and Abolition) Act 1970 is concerned, it is clear that under section 20, if any amenity required to be provided under sections 16, 17, 18 or 19 for the benefit of the workmen employed in an establishment is not provided by the contractor, the obligation to provide such amenity rests on the principal employer and therefore if in the construction work of the Asiad projects, the contractors do not carry out the obligations imposed upon them by any of these sections, the Union of India, the Delhi Administration and the Delhi Development Authority as principal employers would be liable and these obligations would be enforceable against them. The same position obtains in regard to the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979. In the case of this Act also, sections 17 and 18 make the principal employer liable to make payment of the wages to the migrant workmen employed by the contractor as also to pay the allowances provided under sections 14 and 15 and to provide the facilities specified in section 16 to such migrant workmen, in case the contractor fails to do so and these obligations are also therefore clearly enforceable against the Union of India, the Delhi Administration and the Delhi Development Authority as principal employers. So far as Article 24 of the Constitution is concerned, it embodies a fundamental right which is plainly and indubitably enforceable against every one and by reason of its compulsive mandate, no one can employ a child below the age of 14 years in a hazardous employment and since, as pointed out above, construction work is a hazardous employment, no child below the age of 14 years can be employed in construction work and there C D E F G H

fore, not only are the contractors under a constitutional mandate not to employ any child below the age of 14 years, but it is also the duty of the Union of India, the Delhi Administration and the Delhi Development Authority to ensure that this constitutional obligation is obeyed by the contractors to whom they have entrusted the construction work of the various Asiad projects. The Union of India, the Delhi Administration and the Delhi Development Authority cannot fold their hands in despair and become silent spectators of the breach of a constitutional prohibition being committed by their own contractors. So also with regard to the observance of the provisions of the Equal Remuneration Act 1946, the Union of India, the Delhi Administration and the Delhi Development Authority cannot avoid their obligation to ensure that these provisions are complied with by the contractors. It is the principle of equality embodied in Article 14 of the Constitution which finds expression in the provisions of the Equal Remuneration Act 1946 and if the Union of India, the Delhi Administration or the Delhi Development Authority at any time finds that the provisions of the Equal Remuneration Act 1946 are not observed and the principles of equality before the law enshrined in Article 14 is violated by its own contractors, it cannot ignore such violation and sit quiet by adopting a non-interfering attitude and taking shelter under the executive that the violation is being committed by the contractors and not by it. If any particular contractor is committing a breach of the provisions of the Equal Remuneration Act 1946 and thus denying equality before the law to the workmen, the Union of India, the Delhi Administration or the Delhi Development Authority as the case may be, would be under an obligation to ensure that the contractor observes the provisions of the Equal Remuneration Act 1946 and does not breach the equality clause enacted in Article 14. The Union of India, the Delhi Administration and the Delhi Development Authority must also ensure that the minimum wage is paid to the workmen as provided under the Minimum Wages Act 1948. The contractors are, of course, liable to pay the minimum wage to the workmen employed by them but the Union of India the Delhi Administration and the Delhi Development Authority who have entrusted the construction work to the contractors would equally be responsible to ensure that the minimum wage is paid to the workmen by their contractors. This obligation which even otherwise rests on the Union of India, the Delhi Administration and the Delhi Development Authority is additionally

re-inforced by section 17 of the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 in so far as migrant workmen are concerned. It is obvious, therefore, that the Union of India, the Delhi Administration and the Delhi Development Authority cannot escape their obligation to the workmen to ensure observance of these labour laws by the contractors and if these labour laws are not complied with by the contractors, the workmen would clearly have a cause of action against the Union of India, the Delhi Administration and the Delhi Development Authority.

That takes us to a consideration of the other limb of the second preliminary objection. The argument of the respondents under this head of preliminary objection was that a writ petition under Article 32 cannot be maintained unless it complains of a breach of some fundamental right or the other and since what were alleged in the present writ petition were merely violations of the labour laws enacted for the benefit of the workmen and not breaches of any fundamental rights, the present writ petition was not maintainable and was liable to be dismissed. Now it is true that the present writ petition cannot be maintained by the petitioners unless they can show some violation of a fundamental right, for it is only for enforcement of a fundamental right that a writ petition can be maintained in this Court under Article 32. So far we agree with the contention of the respondents but there our agreement ends. We cannot accept the plea of the respondents that the present writ petition does not complain of any breach of a fundamental right. The complaint of violation of Article 24 based on the averment that children below the age of 14 years are employed in the construction work of the Asiad projects is clearly a complaint of violation of a fundamental right. So also when the petitioners allege non-observance of the provisions of the Equal Remuneration Act 1946, it is in effect and substance a complaint of breach of the principle of equality before the law enshrined in Article 14 and it can hardly be disputed that such a complaint can legitimately form the subject matter of a writ petition under Article 32. Then there is the complaint of non-observance of the provisions of the Contract Labour (Regulation & Abolition) Act 1970 and the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 and this is also in our opinion a complaint relating to violation of Article 21. This Article has

A acquired a new dimension as a result of the decision of this Court in *Maneka Gandhi* v. *Union of India*(1) and it has received its most expansive interpretation in *Francis Coralie Mullin* v. *The Administrator, Union Territory of Delhi & Ors*,(2) where it has been held by this Court that the right to life guaranteed under this Article is not confined merely to physical existence or to the use of any B faculty or limb through which life is enjoyed or the soul communicates with outside world but it also includes within its scope and ambit the right to live with basic human dignity and the State cannot deprive any one of this precious and invaluable right because no procedure by which such deprivation may be effected can ever be C regarded as reasonable, fair and just. Now the rights and benefits conferred on the workmen employed by a contractor under the provisions of the Contract Labour (Regulation and Abolition) Act 1970 and the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 are clearly intended to ensure basic human dignity to the workmen and if the workmen are D deprived of any of these rights and benefits to which they are entitled under the provisions of these two pieces of social welfare legislation, that would clearly be a violation of Article 21 by the Union of India, the Delhi Administration and the Delhi Development Authority which, as principal employers, are made statutorily responsible for securing such rights and benefits to the workmen. E That leaves for consideration the complaint in regard to non-payment of minimum wage to the workmen under the Minimum Wages Act 1948. We are of the view that this complaint is also one relating to breach of a fundamental right and for reasons which we shall presently state, it is the fundamental right enshrined in Article 23 which is violated by non-payment of minimum wage to the F workmen.

Article 23 enacts a very important fundamental right in the following terms :

G "Art. 23 : Prohibition of traffic in human beings and forced labour—

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and

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(1) [1978] 2 S.C.R. 663.
(2) [1981] 2 S.C.R. 516.

any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this Article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Now many of the fundamental rights enacted in Part III operate as limitations on the power of the State and impose negative obligations on the State not to encroach on individual liberty and they are enforceable only against the State. But there are certain fundamental rights conferred by the Constitution which are enforceable against the whole world and they are to be found *inter alia* in Articles 17, 23 and 24. We have already discussed the true scope and ambit of Article 24 in an earlier portion of this judgment and hence we do not propose to say anything more about it. So also we need not expatiate on the proper meaning and effect of the fundamental right enshrined in Article 17 since we are not concerned with that Article in the present writ petition. It is Article 23 with which we are concerned and that Article is clearly designed to protect the individual not only against the State but also against other private citizens. Article 23 is not limited in its application against the State but it prohibits "traffic in human beings and begar and other similar forms of forced labour" practised by anyone else. The sweep of Article 23 is wide and unlimited and it strikes at traffic in human beings and begar and other similar forms of forced labour" wherever they are found. The reason for enacting this provision in the chapter on fundamental rights is to be found in the socio-economic condition of the people at the time when the Constitution came to be enacted. The Constitution makers, when they set out to frame the Constitution, found that they had the enormous task before them of changing the socio-economic structure of the country and bringing about socio-economic regeneration with a view to reaching social and economic justice to the common man. Large masses of people, bled white by well nigh two centuries of foreign rule, were living in abject poverty and destitution with ignorance and illiteracy accentuating their helplessness and despair. The society had degenerated into a status-oriented hierarchical society

A with little respect for the dignity of individual who was in the lower rungs of the social ladder or in an economically impoverished condition. The political revolution was completed and it had succeeded in bringing freedom to the counrty but freedom was not an end in itself, it was only a means to an end, the end being the raising of the people to higher levels of achievement and bringing about
B their total advancement and welfare. Political freedom had no meaning unless it was accompanied by social and economic freedom and it was therefore necessary to carry forward the social and economic revolution with a view to creating social economic conditions in which every one would be able to enjoy basic human rights
C and participate in the fruits of freedom and liberty in an egalitarian social and economic framework. It was with this end in view that the constitution makers enacted the Directive Principles of State Policy in Part IV of the Constitution setting out the constitutional goal of a new socio-economic order. Now there was one feature of our national life which was ugly and shameful and which cried for
D urgent attention and that was the existence of bonded or forced labour in large parts of the country. This evil was the relic of feudal exploitative society and it was totally incompatible with the new egalitarian socio-economic order which, "We the people of India" were determined to build and constituted a gross and most revolting denial of basic human dignity. It was therefore necessary to eradi-
E cate this pernicious practice and wipe it out altogether from the national scene and this had to be done immediately because with the advent of freedom, such practice could not be allowed to continue to blight the national life any longer. Obviously, it would not have been enough merely to include abolition of forced labour in the Directive Principles of State Policy, because then the outlaying
F of this practice would not have been legally enforceable and it would have continued to plague our national life in violation of the basic constitutional norms and values untill some appropriate legislation could be brought by the legislature forbidding such practice. The Constitution makers therefore decided to give teeth to their resolve to obliterate and wipe out this evil practice by enacting consti-
G tutional prohibition against it in the chapter on fundamental rights, so that the abolition of such practice may beco me enforceable and effective as soon as the Constitution came into force. This is the reason why the provision enacted in Article 23 was included in the chapter on fundamental rights. The prohibition against "traffic in
H human beings and begar and other similar forms of forced labour"

is clearly intended to be a general prohibition, total in its effect and all pervasive in its range and it is enforceable not only against the State but also against any other person indulging in any such practice.

The question then is as to what is the true scope and meaning of the expression "traffic in human beings and begar and other similar forms of forced labour" in Article 237 What are the forms of 'forced labour' prohibited by that Article and what kind of labour provided by a person can be regarded as 'forced labour' so as to fall within this prohibition ?

When the Constitution makers enacted Article 23 they had before them Article of the Universal Declaration of Human Rights but they deliberately departed from its language and employed words which would make the reach and content of Article 23 much wider than that of Article 4 of the Universal Declaration of Human Rights. They banned 'traffic in human beings which is an expression of much larger amplitude than "slave trade" and they also interdicted "begar and other similar forms of forced labour". The question is what is the scope and ambit of the expression 'begar and other similar forms of forced labour ?" In this expression wide enough to include every conceivable form of forced labour and what is the true scope and meaning of the words "forced labour ?" The word 'begar' in this Article is not a word of common use in English language. It is a word of Indian origin which like many other words has found its way in the English vocabulary. It is very difficult to formulate a precise definition of the word begar' but there can be no doubt that it is a form of forced labour under which a person is compelled to work without receiving any remuneration. Molesworth describes 'begar' as "labour or service exacted by a government or person in power without giving remuneration for it." Wilson's glossary of Judicial and Revenue Terms gives the following meaning of the word 'begar' : "a forced labourer, one pressed to carry burthens for individuals or the public. Under the old system, when pressed for public service, no pay was given. The Begari, though still liable to be pressed for public objects, now receives pay : Forced labour for private service is prohibited." "Begar" may therefore be loosely described as labour or service which a person is forced to give without receiving any remuneration for it. That was the meaning of the word 'begar' accepted by a Division Bench

A of the Bombay High Court in *S. Vasudevan* v. *S.D. Mital.*(1) 'Begar' is thus clearly a film of forced labour. Now it is not merely 'begar' which is unconstitutionally prohibited by Article 23 but also all other similar forms of forced labour. This Article strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to basic human values. The practice B of forced labour is condemned in almost every international instrument dealing with human rights. It is interesting to find that as far back as 1930 long before the Universal Declaration of Human Rights came into being, International Labour Organisation adopted Convention No. 29 laying down that every member of the International Labour Organisation which ratifies this convention shall "suppress C the use of forced or compulsory labour in all its forms" and this prohibition was elaborated in Convention No. 105 adopted by the International Labour Organisation in 1957. The words "forced or compulsory labour" in Convention No. 29 had of course a limited meaning but that was so on account of the restricted definition of these words given in Article 2 of the Convention. Article 4 of the D European Convention of Human Rights and Article 8 of the International Covenant on Civil and Political Rights also prohibit forced or compulsory labour. Article 23 is in the same strain and it enacts a prohibition against forced labour in whatever form it may be found. The learned counsel appearing on behalf of the respondent E laid some emphasis on the word 'similar' and contended that it is not every form of forced labour which is prohibited by Article 23 but only such form of forced labour as is similar to 'begar' and since 'begar' means labour or service which a person is forced to give without receiving any remuneration for it, the interdict of Article 23 is limited only to those forms of forced labour where labour or service F is exacted from a person without paying any remuneration at all and if some remuneration is paid, though it be inadequate, it would not fall within the words 'other similar forms of forced labour.' This contention seeks to unduly restrict the amplitude of the prohibition against forced labour enacted in Article 23 and is in our opinion not well founded. It does not accord with the principle enunciated by G this Court in *Maneka Gandhi* v. *Union of India*(2) that when interpreting the provisions of the Constitution conferring fundamental rights, the attempt of the court should be to expand the reach and ambit of the fundamental rights rather than to attenuate their

H (1) AIR 1962 Bom. 53.
(2) [1978] 2 SCR 621.

meaning and content. It is difficult to imagine that the Constitution makers should have intended to strike only at certain forms of forced labour leaving it open to the socially or economically powerful sections of the community to exploit the poor and weaker sections by resorting to other forms of forced labour. Could there be any logic or reason in enacting that if a person is forced to give labour or service to another without receiving any remuneration at all it should be regarded as a pernicious practice sufficient to attract the condemnation of Article 23, but if some remuneration is paid for it, then it should be outside the inhibition of that Article ? If this were the true interpretation, Article 23 would be reduced to a mere rope of sand, for it would then be the easiest thing in an exploitative society for a person belonging to a socially or economically dominant class to exact labour or serivce from a person belonging to the deprived and vulnerable section of the community by paying a negligible amount of remuneration and thus escape the rigour of Article 23. We do not think it would be right to place on the language of Article 23 an interpretation which would emasculate its beneficent provisions and defeat the very purpose of enacting them. We are clear of the view that Article 23 is intended to abolish every form of forced labour. The words "other similar forms of forced labour are used in Article 23 not with a view to importing the particular characteristic of 'begar' that labour or service should be exacted without payment of any remuneration but with a view to bringing within the scope and ambit of that Article all other forms of forced labour and since 'begar' is one form of forced labour, the Constitution makers used the words "other similar forms of forced labour." If the requirement that labour or work should be exacted without any remuneration were imported in other forms of forced labour, they would straightaway come within the meaning of the word 'begar' and in that event there would be no need to have the additional words "other similar forms of forced labour." These words would be rendered futile and meaningless and it is a well recognised rule of interpretation that the court should avoid a construction which as the effect of rendering any words used by the legislature superfluous or redundent. The object of adding these words was clearly to expand the reach and content of Article 23 by including, in addition to 'begar', other forms of forced labour within the prohibition of that Article. Every form of forced labour 'begar' or otherwise, is within the inhibition of Article 23 and it makes no difference whether the per-

son who is forced to give his labour or service to another is remunerated or not. Even if remuneration is paid, labour supplied by a person would be hit by this Article if it is forced labour, that is, labour supplied not willingly but as a result of force or compulsion. Take for example a case where a person has entered into a contract of service with another for a period of three years and he wishes to discontinue serving such other person before the expiration of the period of three years. If a law were to provide that in such a case the contract shall be specifically enforced and he shall be compelled to serve for the full period of three years, it would clearly amount to forced labour and such a law would be void as offending Article 23. That is why specific performance of a contract of service cannot be enforced against an employee and the employee cannot be forced by compulsion of law to continue to serve the employer. Of course, if there is a breach of the contract of service, the employee would be liable to pay damages to the employer but he cannot be forced to continue to serve the employer without breaching the injunction of Article 23. This was precisely the view taken by the Supreme Court of United States in *Baily* v. *Alabama*(1) while dealing with a similar provision in the Thirteenth Amendment. There, a legislation enacted by the Alabama State providing that when a person with intent to injure or defraud his employer enters into a contract in writing for the purpose of any service and obtains money or other property from the employer and without refunding the money or the property refuses or fails to perform such service, he will be punished with of fine. The constitutional validity of this legislation was challenged on the ground that it violated the Thirteenth Amendment which *inter alia* provides : "Neither slavery nor involuntary servitude shall exist within the United States or any place subject to their jurisdiction". This challenge was upheld by a majority of the Court and Mr. Justice Hughes delivering the majority opinion said :

> "We cannot escape the conclusion that although the statute in terms is to punish fraud, still its natural and inevitable effect is to expose to conviction for crime those who simply fail or refuse to perform contracts for personal service in liquidation of a debt, and judging its purpose by its effect that it seeks in this way to provide the means of compulsion through which performance of such service may

(1) 219 U.S. 219 : 55 L. Ed. 191.

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be secured. The question is whether such a statute is constitutional".

The learned Judge proceeded to explain the scope and ambit of the expression 'involuntary servitude' in the following words :

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> "The plain intention was to abolish slavery of whatever name and form and all its badges and incidents, to render impossible any state of bondage ; to make labour free by prohibiting that control by which the personal service of one men is disposed of or coerced for another's benefit, which is the essence of involuntary servitude."

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Then, dealing with the contention that the employee in that case had *voluntarily* contracted to perform the service which was sought to be compelled and there was therefore no violation of the provisions of the Thirteenth Amendment, the learned Judge observed :

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> "The fact that the debtor contracted to perform the labour which is sought to be compelled does not withdraw the attempted enforcement from the condemnation of the statute. The full intent of the constitutional provision could be defeated with obvious facility if through the guise of contracts under which advances had been made, debtors could be held to compulsory service. It is the compulsion of the service that the statute inhibits, for when that occurs, the condition of servitute is created which would be not less involuntary because of the original agreement to work out the indebtedness. The contract exposes the debtor to liability for the loss due to the breach, but not to enforced labour."

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and proceeded to elaborate this thesis by pointing out :

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> "Peonage is sometimes classified as voluntary or involuntary, but this implies simply a difference in the mode of origin, but none in the character of the servitude. The one exists where the debtor voluntarily contracts to enter the service of his creditor. The other is forced upon the debtor by some provision of law. But peonage however created, is compulsory service, involuntary servitude. The peon can release himself therefrom, it is true, by the pay-

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A ment of the debt, but otherwise the service is enforced. A clear distinction exists between peonage and the voluntary performance of labour or rendering of services in payment of a debt. In the latter case the debtor though contracting to pay his indebtedness by labour of service, and subject like any other contractor to an action for damages for
B breach of that contract, can elect at any time to break it, and no law or force compels performance or a continuance of the service."

C It is therefore clear that even if a person has contracted with another to perform service and there is consideration for such service in the shape of liquidation of debt or even remuneration, he cannot be forced by compulsion of law or otherwise to continue to perform such service, as that would be forced labour within the inhibition of Article 23. This Article strikes at every form of forced labour even
D if it has its origin in a contract voluntarily entered into by the person obligated to provide labour or service Vide *Pollock* v. *Williams*.(1) The reason is that it offends against human dignity to compel a person to provide labour or service to another if he does not wish to do so, even though it be in breach of the contract entered into by him. There should be no serfdom or involuntary servitude in a free
E democratic India which respects the dignity of the individual and the worth of the human person. Moreover, in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, a contract of service may appear on its face voluntary but it may, in reality, be involuntary, because while entering into the contract, the employee, by reason of his
F economically helpless condition, may have been faced with Hobson's choice, either to starve or to submit to the exploitative terms dictated by the powerful employer. It would be a travesty of justice to hold the employee in such a case to the terms of the contract and to compel him to serve the employer even though he may not wish to do so. That would aggravate the inequality and injustice from which
G the employee even otherwise suffers on account of his economically disadvantaged position and lend the authority of law to the exploitation of the poor helpless employee by the economically powerful employer. Article 23 therefore says that no one shall be forced to

H (1) 322 U.S. 4:88 Lawyers Edition 1095.

provide labour or service against his will, even though it be under a contract of service.

Now the next question that arises for consideration is whether there is any breach of Article 23 when a person provides labour or service to the State or to any other person and is paid less than the minimum wage for it. It is obvious that ordinarily no one would willingly supply labour or service to another for less than the minimum wage, when he knows that under the law he is entitled to get minimum wage for the labour or service provided by him. It may therefore be legitimately presumed that when a person provides labour or service to another against receipt of remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under law to receive. What Article 23 prohibits is 'forced labour' that is labour or service which a person is forced to provide and 'force' which would make such labour or service 'forced labour' may arise in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as 'force' and if labour or service is compelled as a result of such 'force', it would we 'forced labour'. Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to acceept any work that comes hims way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly 'forced labour.' There is no reason why the word 'forced' should be read in a narrow and

A restricted manner so as to be confined only to physical or legal 'force' particularly when the national charter, its fundamental document has promised to build a new socialist republic where there will be socio-economic justice for all and every one shall have the right to work, to education and to adequate means of livelihood. The constitution makers have given us one of the most remarkable B documents in history for ushering in a new socio-economic order and the Constitution which they have forged for us has a social purpose and an economic mission and therefore every word or phrase in the Constitution must be interpreted in a manner which would advance the socio-economic objective of the Constitution. It C is not unoften that in capitalist society economic circumstance exert much greater pressure on an individual in driving him to a particular course of action than physical compulsion or force of legislative provision. The word 'force' must therefore be construted to include not only physical or legal force but also force arising from the compulsion of economic circumstance which leaves no choice of D alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage of course, if a person provides labour or service to another against receipt of the minimum wage, it would not be possible to say that the labour or service provided by him is 'forced labour' because he gets what he is entitled under law to receive. E No inference can reasonably be drawn in such a case that he is forced to provide labour or service for the simple reason that he would be providing labour or service against receipt of what is lawfully payable to him just like any other person who is not under the force of any compulsion. We are therefore of the view that where a person provides labour or service to another for remunera- F tion which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words 'forced labour' under Article 23. Such a person would be entitled to come to the court for enforcement of his fundamental right under Article 23 by asking the court to direct payment of the minimum wage to him so that the labour or service provided by him G ceases to be 'forced labour' and the breach of Article 23 is remedied. It is therefore clear that when the petitioners alleged that minimum wage was not paid to the workmen employed by the contractors, the complaint was really in effect and substance a complaint against violation of the fundamental right of the workmen under H Article 23.

Before leaving this subject, we may point out with all the emphasis at our command that whenever any fundamental right, which is enforceable against private individuals such as, for example a fundamental right enacted in Article 17 or 23 or 24 is being violated, it is the constitutional obligation of the State to take the necessary steps for the purpose of interdicting such violation and ensuring observance of the fundamental right by the private individual who is transgressing the same. Of course, the person whose fundamental right is violated can always approach the court for the purpose of enforcement of his fundamental right, but that cannot absolve the State from its constitutional obligation to see that there is no violation of the fundamental right of such person, particularly when he belongs to the weaker section humanity and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. The Union of India, the Delhi Administration and the Delhi Development Authority must therefore be held to be under an obligation to ensure observance of these various labour laws by the contractors and if the provisions of any of these labour laws are violated by the contractors, the petitioners indicating the cause of the workmen are entitled to enforce this obligation against the Union of India, the Delhi Administration and the Delhi Development Authority by filing the present writ petition. The preliminary objections urged on behalf of the respondents must accordingly be rejected.

Having disposed of these preliminary objections, we may turn to consider whether there was any violation of the provisions of the Minimum Wages Act 1948, Article 24 of the Constitution, the Equal Remuneration Act 1976, the Contract labour (Regulation and Abolition) Act 1970 and the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 by the contractors. The Union of India in its affidavit in reply admitted that there were certain violations committed by the contractors but hastened to add that for these violations prosecutions were initiated against the errant contractors and no violation of any of the labour laws was allowed to go unpunished. The Union of India also conceeded in its affidavit in reply that Re. 1/- per worker per day was deducted by the jamadars from the wage payable to the workers with the result that the workers did not get the minimum wage of Rs. 9.25 per day, but stated that proceedings had been taken for the purpose of recovering the amount of the short fall in minimum wage from the contractors. No particulars were however given of

such proceedings adopted by the Union of India or the Delhi Administration or the Delhi Development Authority. It was for this reason that we directed by our order dated 11th May 1982 that whatever is the minimum wage for the time being or if the wage payable is higher than such wage, shall be paid by the contractors to the workmen directly without the intervention of the jamadars and that the jamadars shall not be entitled to deduct or recover any amount from the minimum wage payable to the workmen as and by way of commission or otherwise. He would also direct in addition that if the Union of India or the Delhi Administration or the Delhi Development Authority finds and for this purpose it may hold such inquiry as is possible in the circumstances that any of the workmen has not received the minimum wage payable to him, it shall take the necessary legal action against the contractrs whether by way of proescution or by way of recovery of the amount of the short-fall. We would also suggest that hereafter whenever any contracts are given by the government or any other governmental authority including a public sector corporation, it should be ensured by introducing a suitable provision in the contracts that wage shall be paid by the contractors to the workmen directly without the intervention of any jamadars or thekadars and that the contractors shall ensure that no amount by way of commission or otherwise is deducted or recovered by the Jamadars from the wage of the workmen. So far as observance of the other labour laws by the contractors is concerned, the Union of India, the Delhi Administration and the Delhi Development Authority disputed the claim of the petitioners that the provisions of these labour laws were not being implemented by the contractors save in a few instances where prosecutions had been launched against the contractors. Since it would not be possible for this Court to take evidence for the purpose of deciding this factual dispute between the parties and we also wanted to ensure that in any event the provisions of these various laws enacted for the benefit of the workmen were strictly observed and implemented by the contractors, we by our order dated 11th May 1982 appointed three Ombudsmen and requested them to make periodical inspections of the sites of the construction work for the purpose of ascertaining whether the provisions of these labour laws were being carried out and the workers were receiving the benefits and amenities provided for them under these beneficient statutes or whether there were any violations of these provisions being committed by the contractors so that on the basis of the reports of the three Ombudsmen, this Court could give further direction in the matter if found necessary. We may

add that whenever any construction work is being carried out either departmentally or through contractors, the government or any other governmental authority including a public sector corporation which is carrying out such work must take great care to see that the provisions of the labour laws are being strictly observed and they should not wait for any complaint to be received from the workmen in regard to nonobservance of any such provision before proceeding to take action against the erring officers or contractor, but they should institute an effective system of periodic inspections coupled with occasional surprise inspections by the higher officers in order to ensure that there are no violations of the provisions of labour laws and the workmen are not denied the rights and benefits to which they are entitled under such provisions and if any such violations are found, immediate action should be taken against defaulting officers or contractors. That is the least which a government or a governmental authority or a public sector corporation is expected to do in a social welfare state.

These are the reasons for which we made our Order dated 11th May 1982.

S.R. *Petition allowed.*